Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
Policies and Rules Governing Interstate Pay- Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	))))	CC Docket No. 96-146
Policies and Rules Governing Interstate Pay- Per-Call and Other Information Services and Toll-Free Number Usage	)))	CG Docket 04-244
Truth-in-Billing and Billing Format	)	CC Docket 98-170
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Florida Public Service Commission Petition to Initiate Rulemaking to Adopt Additional Safeguards	)))))	RM-8783
Application for Review of Advisory Ruling Regarding Directly Dialed Calls to International Information Services	)))	ENF-95-20

COMMENTS
OF
THE NATIONAL ASSOCIATION OF STATE UTILITY CONSUMER ADVOCATES

November 15, 2004

The National Association of State Utility Consumer Advocates ("NASUCA")[1] submits these comments in response to the Notice of Proposed Rulemaking and Memorandum Opinion and Order ("NPRM") released by the Federal Communications Commission ("Commission" or "FCC") on July 16, 2004.[2] The NPRM seeks comments on the state of the regime regulating pay-per-call services.[3] The NPRM seeks to review the effectiveness of current consumer protections relating to toll-free numbers and to those audiotext information services accessed through dialing methods other than 900 numbers.[4] The Commission correctly focuses on the underlying issue: Given recent changes in technology, what additional steps need to be taken to protect consumers from the widespread abuses arising out of pay-per-call services?[5]

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[1] NASUCA is a voluntary, national association of 44 consumer advocates in 42 states and the District of Columbia, organized in 1979. NASUCA's members are designated by the laws of their respective states to represent the interests of utility consumers before state and federal regulators and in the courts. *See, e.g.*, Ohio Rev. Code Chapter 4911; 71 Pa. Cons. Stat. Ann. § 309-4(a); Md. Pub. Util. Code Ann. § 2-205(b); Minn. Stat. Ann. Subdiv. 6; D.C. Code Ann. § 34-804(d). Members operate independently from state utility commissions, as advocates primarily for residential ratepayers. Some NASUCA member offices are separately established advocate organizations while others are divisions of larger state agencies (*e.g.*, the state Attorney General's office). Associate and affiliate NASUCA members also serve utility consumers, but have not been created by state law or do not have statewide authority.

[2] FCC 04-162, 19 FCC Rcd 13461 (2004), summarized at 69 Fed. Reg. 61152 (Oct. 15, 2004).

[3] Id., ¶1.

[4] Id.

[5] Id.

NASUCA believes that this Commission can and should take a number of additional steps to provide greater protection for consumers from the persistent abuses associated with pay-per-call services. These proposed protections, detailed below, limit the scope of pay-per-call services to 900 numbers only, include requirements that assure there is actual consent to pay-per-call services, allow appropriate billing for such charges, and establish additional rules to assure fair recourse in billing disputes.

I. INTRODUCTION

NASUCA's members represent millions of American utility consumers in state and federal regulatory proceedings, before Congress and federal regulatory agencies, and before state and federal courts on matters concerning rates and service quality. In addition to furthering its members' roles as utility consumers' advocates, NASUCA is charged with exchanging ideas, improving consumer representation in federal and state government, and educating and encouraging greater participation by consumers in the regulatory process.[6]

On behalf of utility consumers, NASUCA was active in the legislative process that led to the enactment of the Telecommunications Act of 1996 ("1996 Act")[7], which substantially amended the Communications Act of 1934 ("1934 Act"). NASUCA is active before the Commission in proceedings implementing the 1996 Act. The 1996 Act revised Section 228 of the 1934 Act to strengthen consumer protections. Among its revisions, Congress expanded

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[6] Article II of NASUCA's Articles of Incorporation and Article II of NASUCA's Constitution both provide that the purpose of the association is to "improve communication among members, to enhance their impact on public policy at the State and Federal levels, and otherwise to assist them in the representation of utility consumer interests." Articles of Incorporation, National Association of State Utility Consumer Advocates, Inc., Art. II, Charter Number 752992 (on file with Florida Department of State), 17 June 1980. Article X of NASUCA's Constitution provides for the adoption of By-Laws. Article V of NASUCA's By-Laws authorize NASUCA to "take positions in regulatory or judicial litigation, by majority vote, on behalf of the organization." Article V, Section 3(b) of the By-Laws of the National Association of State Utility Consumer Advocates, Certified June, 1993.

[7] Pub. L. No. 104-104, 110 Stat. 56.

restrictions on charging callers who use toll free numbers. In addition, NASUCA is represented on the Federal-State Joint Board on Universal Service and other Commission advisory bodies.

II. SUMMARY

A. Additional Recommendations for Consumer Protection That Are Not Contained in the NPRM

- The Commission should prohibit use of any 800 numbers for pay-per-call.
- The FCC should require that personal identification numbers ("PINs") be provided to the consumer, provided only to the person who will be billed for the service, and provided after clear and conspicuous disclosure of the terms and conditions of the presubscription agreement.
- Statutory penalties assessed for slamming should be applied to modem hijacking and unauthorized rerouting.
- NASUCA supports a ban on disconnection of local service for non-payment of any pay-per-call charges regardless of what number the call is accomplished through or whether a presubscription or credit card is involved.
- Written authorization for pay-per-call service should be deemed effective only if provided in a document separate from any solicitation materials. ANI should not be used to document a telephone-billed purchase. If those elements defining "presubscription" are not met, consumers should have a right to pursue this as a billing error and should be subject to protections associated with the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA").[8]

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[8] 106 Stat. 4181 (1992) (*codified at* 47 U.S.C. § 228).

- Only “traditional” directory services, consisting of operator provision of local telephone numbers or services using a 411 code, should be exempted from pay-per-call regulation.
- Pre-subscribed audiotext information services offered through toll-free numbers should be displayed separately from local and long distance service.
- Pay-per-calls billed pursuant to telephone company billings should show the name and the mailing address of the provider of pay-per-call services.
- The burden of proof should be on the provider of pay-per-call services to show that services were authorized. All disputed charges should be subject to a rebuttable presumption that the charges are unauthorized unless there is (i) a record of affirmative subscriber authorization; (ii) a demonstrated pattern of knowledgeable past use; or (iii) other persuasive evidence of authorization.[9]

B. NPRM Recommendations Supported by NASUCA

- The Commission should specifically prohibit billing calls dialed to 800 or other toll-free numbers on the basis of Automatic Number Identification (“ANI”) or equivalent automatically provided calling number identification.

[9] Rule 3(j) California Pub. Util. Comm., General Order 168, 2004 Cal PUC LEXIS 240 (May 27, 2004).

- The Commission should revoke a carrier's 214 certification for authority if a carrier is found to have engaged in consumer fraud.
- In the case of modem hijacking and internet fraud, consumers should be given the opportunity to physically disconnect the call without further charges accruing. In some instances, consumers have had to unplug the phone in order to disconnect. This is not a satisfactory solution.

C. NPRM Proposals That NASUCA Opposes

- Contrary to the FCC's conclusion, its decision in *Jefferson*[10] does not challenge its earlier holdings, which found that revenue sharing arrangements do not comply with Section 228 of the Communications Act.

[10] *AT&T Corp. v. Jefferson Telephone Co.*, Memorandum Opinion and Order, 16 FCC Rcd 16130 (2001) ("*Jefferson*").

III. ARGUMENT

In order for consumers to be protected from abusive practices in the pay-per-call arena, standards must be adopted that better ensure informed choice. These standards should go hand in hand with full and complete disclosure requirements imposed on pay-per-call providers. There can be no informed choice without full and complete disclosure.

A. Toll-Free Numbers For Pay-Per-Call

The current FCC rules set forth criteria that must be met when calls made over toll-free numbers ("800 numbers"[11]) are used to purchase goods and services, including audiotext information services. Under the Commission's rules, common carriers must use contracts or tariffs to prohibit the pay-per-call provider from using 800 numbers in ways that leave consumers without protections against fraud.[12] Carriers are prohibited from allowing the use of 800 numbers (or any other numbers advertised as or widely thought to be toll free) to charge the calling party for information, with two limited exceptions: where there are "presubscription agreements;" or when pay-per-calls are paid for by using certain credit and/or charge cards.[13]

NASUCA believes the use of such numbers for <u>any</u> pay-per-call service is inherently deceptive, because 800 numbers are widely understood to be toll free. The possibility of incurring charges for 800 calls is the equivalent of dialing 911 and reaching a local library. Consumers have a reasonable expectation that 800 number calls are toll free, and disclosure of fees for such calls is often disregarded. As the Commission itself noted, "even if subscribers

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[11] Now grown far beyond the original 800 prefix to include others such as 888, 877, etc.

[12] NPRM, ¶ 10; 47 C.F.R. § 64.1504.

[13] 47 C.F.R. § 64.1504 (c)(1), (2).

realize that charges may be incurred for some 800 number calls, there is no easy way for subscribers to protect themselves from unwanted charges. The important blocking protection offered for 900 numbers is not practical for 800 numbers because it would compel subscribers to sacrifice access to toll-free 800 numbers to protect themselves from 800 number information services charges."[14]

When 800 numbers are used for pay-per-call, the protections found in the Telephone Disclosure And Dispute Resolution Act and in the FCC regulations implementing the Telecommunications Regulatory Act are not applicable. This "loophole" in the regulations has permitted abuses to continue, and is the reason why there are so many complaints in this area. NASUCA supports the closing of this loophole completely. The Commission should flatly prohibit use of any 800 numbers for pay-per-call.

If the Commission continues to allow the use of 800 numbers for pay-per-call services under the limited circumstances prescribed by the Telecommunications Act of 1996, the Commission should consider adopting rules which prevent further abuses. For example, although the statute requires use of a PIN with a prescription agreement,[15] it does not provide sufficient restrictions for the PIN usage. As noted by the National Consumers League, fraudulent practices have emerged that dilute any protection that use of a PIN may provide: "activation" numbers are mailed to households where anyone might use them; consumers are instructed to provide their bank account numbers to verify their identities and then charges are

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[14] See *Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, Order on Reconsideration and Further Notice of Proposed Rule Making, 9 FCC Rcd 6891 (1994) ("TDDRA FNPRM") at 6896.

[15] 47 C.F.R. § 64.1504(c)(1)(vii).

withdrawn from their accounts without authorization; or callers may be prompted to punch in a code (an on-the-spot PIN) on their telephone keypad in order to obtain the advertised services.[16]

Presently, there is no safeguard to assure that the person using the PIN number understands that it will result in charges. The FCC should require that to be valid, the PIN number must be specifically requested by and provided only to the person who has agreed to be billed for the service, and is provided after clear and conspicuous disclosure of the terms and conditions of the presubscription agreement.

1. Protection for Line Subscribers as well as Callers

Currently, as recognized by the FCC, the protections for consumers on pay-per-call services are available to the calling party. NASUCA supports the extension of the protections of Section 64.1504 of the Commission's Rules to the subscriber from whose telephone the call is made on "toll free" pay-per-call services.[17] This would reflect the fact that it is the subscriber who is presumed to be legally responsible for the pay-per-call charges that appear on his/her bill. This will ensure that a telephone subscriber will not be billed for information services obtained by another individual who uses the subscriber's line to place calls. For example, it would, as reasonably speculated by the FCC, help to protect small business from calls made by employees.

2. Use of Number Identification for Billing through Toll-Free Numbers

The Commission should specifically prohibit billing of calls dialed to 800 or other toll-free numbers on the basis of ANI or equivalent information, automatically provided calling number identification.[18] The Commission correctly concluded that a carrier's billing of calls

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[16] FTC File No. R611016, Comments of the National Consumers League (Mar. 10, 1999) at 5-6.

[17] The FCC originally proposed this in 1994. See TDDRA FNPRM at 6866.

[18] NPRM, ¶ 14.

dialed to 800 or other toll free numbers on the basis of ANI amounted to assessing charges on the basis of completion of the call, in violation of Section 228(c)(7)(A) of the Communications Act.[19] Newer technology, such as "charge number" conveys similar information with the same problem as ANI, and also violates Section 228(c)(7)(A) of the Communications Act.

B. Audiotext Information Services Not Provided through Toll-Free Numbers

1. Consumer protection in general

Under the statute, pay-per-call services that are not presubscribed or paid for by credit card may only be offered through telephone numbers beginning with a 900 service access code.[20] Despite this provision, there are thousands of pay-per-call services that are provided outside this pay-per-call setting.[21] This has occurred because pay-per-call providers have masterfully manipulated the presubscribed and credit card exceptions found in the statute.

In its NPRM, the FCC noted its concern that the framework for consumer protections has become impaired as a result of the burgeoning use of audiotext information services outside the pay-per-call setting.[22] NASUCA concurs with the FCC in this regard. That consumer protection framework consists of 1) the provision of information to assist in informed decisions; 2) the ability to block unwanted access to pay-per-call at no cost or reasonable cost; and 3) protection from disconnection of local service for nonpayment of pay-per-call.[23]

Audiotext service provided over non-900 numbers falls completely outside of the consumer protection framework and in that form, it has been commonly and consistently used to

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[19] Id

[20] 47 C.F.R. § 64.1506.

[21] NPRM, ¶ 11.

[22] NPRM, ¶ 15.

[23] Id.

perpetrate consumer fraud.[24] Consequently, consumers cannot make informed decisions on such services. There is no opportunity to hang up without being charged.[25] There need not be disclosure of the cost of call.[26] Disconnection of local and/or long distance service can occur for non-payment of these non-900 calls.[27] There is no easy way to block access, unless the customer is willing to block all non-900 calling from their line.

Even where more limited blocking is feasible, alternative dialing routes can be used to circumvent subscriber blocking. For example, even if subscribers disable international calling from their phone lines, many modem dialers are programmed to circumvent the "block" and initiate international calls using a "10-10 dial around prefix."[28]

Such unauthorized rerouting of calls can create many problems for consumers, who are left without recourse to the protections associated with 900 calls. The FCC accurately describes the phenomenon of "modem hijacking" -- where local calls are redirected without the caller's authorization, through software programs, which disconnect Internet users' local dial up numbers and dial international numbers often through long-distance carriers other than those chosen by subscribers.[29]

Some consumers have received telephone bills containing calls to exotic locations. These consumers realize that they were surfing the Internet at the time of these telephone calls.

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[24] NPRM, ¶ 15-18.

[25] *Cf*. 47 C.F.R. § 64.1504(c)(2)(vi).

[26] *Cf.* 47 C.F.R. § 64.1504(c)(2)(ii).

[27] *Cf.* 47 C.F.R. §64.1507.

[28] See FTC Consumer Alert (May 2003).

[29] NPRM, ¶ 17.

Unfortunately, in many states the victim is obligated to pay the local telephone provider the total amount for these calls or face disconnection of local service. Consumers do not understand how an international long distance phone call could have been made from their computer when it was connected to their *local* Internet service provider. This problem, which occurs principally with entertainment web sites (mostly adult entertainment sites, but also sites offering gambling, psychic services and travel deals), is growing due in large part to the fact that the consumer does not realize what has happened until it is too late. If consumers were making direct dialed calls to these entities they would use a 900 number and receive the 900 number protections. However, because these calls are placed through the Internet, consumers are not afforded those protections.

Modem hijacking has grown to epidemic proportions in the United States, Canada and Ireland. Bell Canada and the Ireland Commission for Communications Regulation ("ComReg") took steps to protect their consumers from such fraud. In July 2004, Bell Canada announced that it would block calls to several overseas countries because of Internet fraud operating in those countries.[30] As of August 15, 2004, Bell Canada blocks calls to several additional countries, bringing the total number to 10 locations.[31] Effective October 4, 2004, ComReg suspended direct dialing to 13 countries, mainly in the South Pacific.[32] The United States has yet to take any action to protect consumers from these scams.

Fortunately, some long distance carriers offer a one-time good will adjustment; others, however, subscribe to a "caveat emptor" policy and require consumers to pay the high long

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[30] Online New CBC Montreal, http://montreal.cbc.ca/regional/servlet/View?filename=qc_bell20040708, July 8, 2004, "Bell Blocks Calls due to Internet Scam."

[31] Royal Canadian Mounted Police, last modified 10/29/04, http://www.rcmp-grc.gc.ca/qc/proser/cybercrime/crimtrade.htm#Numeros

[32] Ireland Commission for Communications Regulation, Decision No. D13/04, Document No. 04/99, September 20, 2004.

distance bills. Under those conditions, consumers can end up with local service being disconnected for what are services that arguably should be covered by pay-per-call protections.

Additional actions are needed by the FCC to curtail this behavior. Revocation of a carriers' 214 certification for such conduct is one sanction the Commission has authority to impose that should reduce the likelihood of consumer fraud. Additionally, modem hijacking and unauthorized rerouting appear to be tantamount to slamming on a call-by-call basis. For this reason, NASUCA advocates that the identical penalties and remedies assessed for slamming[33] be adapted to apply to this behavior. NASUCA also supports the proposition , posited by the

[33] See 47 C.F.R. § 64.1140 et. al.

FCC,[34] that consumers should be given the opportunity to allow physical call disconnection. The FCC has noted that sometimes there is no way to disconnect the call other than to unplug the telephone line. This is not a satisfactory solution for consumers.

Finally, NASUCA supports imposing a ban on disconnection of local service for non-payment of pay-per-call that is applicable to any pay-per-call, regardless of what number the call is accomplished through or whether a presubscription or credit card is involved. Although there are a number of states that currently provide this protection,[35] a national policy would provide a uniform application of this crucial consumer protection.

2. Presubscription or comparable agreements

Although the Commission's rules seek to limit the circumstances under which information service calls can be made over non-900 numbers,[36] there are sizeable loopholes that permit audiotext information services providers to exploit the rules. Audiotext information services can be offered over non-900 numbers if there is a "presubscription agreement" executed in writing or if payments for the services are made through direct remittance, prepaid account, debit credit, charge or calling card.[37] In these circumstances, the consumer protections do not apply.

The Commission's rules define a presubscription agreement as a contractual agreement where the service provider "clearly and conspicuously" discloses "all material terms and

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[34] NPRM, ¶ 17.

[35] For example, Ohio, Texas and Colorado have statutes or rules that currently prohibit the disconnection of local service for non-payment of non-basic services, such as pay-per-call. See Ohio Admin. Code § 4901:1-5-17(J); Texas Utilities Code, Public Utility Regulatory Act § 55.012; and 4 CCR 723-2-9.2, 9.3. Similar provisions can be found in the rules or statutes of New York, Delaware, California, Pennsylvania, Indiana, Maine and West Virginia.

[36] See 47 C.F.R. § 64.1504.

[37] NPRM, ¶¶ 22-23; 47 C.F.R. § 64.1504.

conditions " associated with the use of the service.[38] However, this language has not precluded a number of pay-per-call providers from using deceptive practices to obtain a prescubscription agreement. For instance, some consumers have unwittingly entered into a "presubscription agreement" by merely filling out entry forms for contests or prizes. These should not be deemed valid presubscription agreements under the Commission's rules. Written orders should be invalid if they are used in conjunction with entry forms of sweepstakes, contests, or any other program that offers prizes or gifts.[39] Instead, presubcription agreements should require express authorization and affirmative and informed action by the customer.

Toward this end, written authorization for service should be through a document separate from any solicitation materials. Further, ANI should not be used to document a telephone-billed purchase. It does not show who made the call or what if any understanding existed between the parties. If these elements defining "presubscription" are not met, consumers should have a right to pursue these charges as a billing error, and should be afforded the protections offered by the TDDRA.[40]

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[38] 47 C.F.R. § 64.1501(b)(1).

[39] See Rule 2890 (b) California Pub. Util. Com.

[40] See *Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996*, CC Docket No. 96-146*; Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, CC Docket No. 93-22, Order and Notice of Proposed Rule Making, 11 FCC Rcd 14738 (1996) at 14754.

C. FAIR BILLING

The overriding principle in billing should be to assure that subscribers receive sufficient information to confirm that their bills reflect only services they have ordered and received, at agreed to prices. Additionally, consumers need to be given adequate recourse rights to protect themselves from fraudulent or unauthorized charges.

The FCC seeks comment on whether existing rules governing billing for pay-per-call services, combined with truth in billing requirements, are sufficient to address any current billing concerns.

NASUCA recommends that:

(1) Pre-subscribed audiotext information services through toll-free numbers should be displayed separately from local and long distance service on a customer's bill.

(2) Pay-per-calls billed pursuant to telephone company billings should show the name and the mailing address of the provider of the pay-per-call services.

(3) The burden of proof should be on the provider of pay-per-call services to show that services were authorized. All disputed charges should be subject to a rebuttable presumption that the charges are unauthorized unless there is (i) a record of affirmative subscriber authorization; (ii) a demonstrated pattern of knowledgeable past use; or (iii) other persuasive evidence of authorization. [41]

(4) The dispute notice period should run from the time that the pay-per-call services appear on the bill received by the customer to the following billing cycle or 30 days, whichever is longer, not sixty days from the date of services rendered.

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[41] Rule 3(j) California Pub. Util. Comm., General Order 168, 2004 Cal PUC LEXIS 240 (May 27, 2004).

D. Revenue sharing arrangements

In its NPRM, the Commission revisits revenue sharing arrangements, which it has, in the past, condemned as "evasions of consumer protections."[42] The revenue sharing arrangements arise where audiotext information service providers do not charge callers for the information services outright, but receive a commission from the common carrier for the telephone traffic. The Commission notes that it had in the past "tentatively concluded" that "any form of remuneration between a carrier and audiotext information services provider constituted per se evidence that the charge levied actually exceeds the charge for transmission."[43] Thus, such calls would be brought under the Section 228 provisions and could only be offered through 900 numbers.[44]

Now, the Commission is apparently retracting that tentative conclusion in light of its 2001 *Jefferson* decision.[45] The Commission asks commenters in the instant proceeding whether it is "possible or appropriate to find that any revenue-sharing arrangements do not comply with Section 228 even if such arrangements would not violate 201(b)."[46] NASUCA believes that it is possible and appropriate to find that any revenue sharing arrangement does not comply with Section 228, even if it does not violate 201(b). A close look at *Jefferson* reveals that the decision is not as far reaching as the FCC is assuming in the NPRM.

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[42] NPRM, ¶ 29.

[43]Id., ¶¶ 30, 31.

[44] See for example, Letter from John Muleta, Chief of the Common Carrier Enforcement Bureau, to Ronald Marlowe, DA 95-1905, 10 FCC Rcd 10945 (Sept. 1, 1995) ("Marlowe Letter").

[45] NPRM, ¶ 30, 31.

[46] NPRM, ¶ 31.

In *Jefferson*, the Commission addressed the lawfulness of an access revenue–sharing arrangement between a local exchange company (Jefferson Telephone Company, or "Jefferson") and an international information services provider (International Audiotext Network, or "IAN"). Under the circumstances presented, the callers paid their designated IXC tariffed long-distance toll charges. Jefferson paid IAN based on the amount of access revenues it received from terminating calls to IAN. AT&T filed a complaint against Jefferson alleging that the arrangement violated **Sections 201 and 202 of** the Communications Act. Notably, AT&T failed to pursue a charge against Jefferson for violation of Section 228. The Commission found against AT&T, stating:

> Although we deny AT&T's complaint, we emphasize the narrowness of our holding in this proceeding. We find simply that, based on the specific facts and arguments presented here, AT&T has failed to demonstrate that Jefferson violated its duty as a common carrier of section 202(a) by entering into an access revenue sharing agreement with an end-user information provider. We express no view on whether a different record could have demonstrated that the revenue sharing agreement at issue in this complaint (or other revenue-sharing agreements between LECs and end user customers) ran afoul of sections 201(b), 202(a) or other statutory or regulatory requirements.[47]

Contrary to the FCC's conclusion in the NPRM, its decision in *Jefferson* should not cause it to doubt its earlier holdings, which found that revenue-sharing arrangements do not comply

[47] 16 FCC Rcd at 16137.

with Section 228 of the Communications Act.[48] *Jefferson* did not address whether Section 228 was violated by the revenue sharing arrangement. It focused only on Sections 202(b) and 202(a) of the Communications Act. Moreover, the holding in *Jefferson* was based on the unique facts presented, or in this case, not presented by AT&T. Any argument that *Jefferson* reverses the Commission's earlier holdings should be summarily dismissed.

E. New and Evolving Services: Definition of Exempted Directory Services

The Commission seeks comments on how to further define "directory services" that are specifically exempt from the consumer protections of pay-per-call.[49] This issue arises because a number of "enhanced directory services" are now being provided. NASUCA is concerned that common carriers operating as providers of audiotext services may seek to evade regulation by offering information services through a directory services number. As the Commission has noted,

> The specific exemption of certain types of service and transactions from the reach of pay-per-call regulation, accomplished through Section 228(i)(2), creates incentives for IPs [information providers] to tailor their

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[48] Marlowe Letter, *supra*. In the Marlowe Letter, the FCC Staff correctly determined that revenue sharing arrangements under consideration violated both Section 201(b) and Section 228 of the Act. The Staff advised that such services should not be tariffed as common carrier services, but rather were "enhanced services" subject to the TDDRA and rules and regulations adopted by the FCC and FTC. "The services you describe are also unlawful under Section 228 of the Act and the Commission's implementing rules. It appears from your description of the proposed services that your clients desire to operate within the 'tariffed service' exception to the definition of pay-per-call service, and thus evade the letter and spirit of those provisions and the important consumer safeguards for information services. The Commission is committed to eliminating abusive practices which deprive consumers of their statutory rights concerning such services. Although Congress exempted from the pay-per-call definition services that are provided on a tariffed basis, we do not believe that the service you describe is encompassed within that exception. The fact that the consumer does not directly pay the information provider does not exclude the service from the definition of pay-per-call if the payment is simply paid to the information provider by the carrier and then recovered from the consumer through the transport charge. In this case, the transport tariff is a sham, the consumer has, in fact, paid the carrier for transport and the provider, albeit indirectly, for the information. Section 64.1506 of the Commission's rules requires that such calls be provided only on the 900 services access code. Clearly, Congress did not intend that the carefully crafted provision of the TDDRA and Section 228 of the Act could be evaded by the arrangement you describe." 10 FCC Rcd at 10946.

[49] NPRM, ¶ 34.

> information services to fall within these exemptions. Thus, clear standards interpreting this provision are necessary to ensure that consumers enjoy the protections that Congress intended to confer through the TDDRA, and that IPs and carriers properly apply the requirements of our rules.[50]

For this reason, NASUCA supports specific limitation of the definition and exceptions applicable to "directory services" to "traditional" directory services, such as operator provision of local telephone numbers or services using a 411 code.

V. CONCLUSION

NASUCA's recommendations are premised upon protecting consumers from rampant abuses that are occurring in the pay-per-call-service industry. Limiting the scope of pay-per-call services to 900 numbers only, assuring that there is true consent to services, allowing appropriate billing and establishing additional rules for recourse are essential to preserving consumer protection under the regulatory scheme set forth in the TDDRA and the 1996 Act. NASUCA urges the Commission to adopt the recommendations made herein.

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[50] *In the Matter of Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act*, 8 FCC Rcd 6885, 6887 (1992).

Respectfully submitted,

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